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A Guide to Trusts in Georgia

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Research Guides

A Guide to Trusts in Georgia

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Introduction

Georgia recognizes charitable trusts, discretionary trusts, express trusts, implied trusts, life insurance trusts, marital trusts, QTIP trusts, resulting trusts, spendthrift trusts, testamentary trusts and Totten trusts. There can be differences from state to state in the requirements and treatments of trusts. This research guide points to sources of legal information about trusts in Georgia. It is meant to be used by the legal professional, law student, or any one without legal training

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Primary Sources

Georgia Statutes

The annotated version of Georgia law gives more than just the text of the law and can be found in law libraries or through Lexis and Westlaw. The Georgia General Assembly website, www.legis.state.ga.us/ under Georgia Code, has the text of the law only but it is free. The annotated version of the Georgia Code is found through online sources such as Westlaw and Lexis and in the law library in the Official Code of Georgia Annotated volumes. Title 53 of the Georgia Code, "Wills, Trusts, and Administration of Estates" has all the trust laws for the state.

O.C.G.A. §53-12-1 (2006):

Defines Chapter 12 of Title 53 as "The Georgia Trust Act"

O.C.G.A. §53-12-2 (2006):

Provides definitions

O.C.G.A. §53-12-3 (2006):

The Trust Act is controlling only if the trust itself is silent and it

applies to all trusts, even those created before its enactment

O.C.G.A. §53-12-4 (2006):

Addresses jurisdiction

O.C.G.A. §53-12-5 (2006):

What to do when a trust and The Trust Act conflict.

O.C.G.A. §53-12-6 (2006):

A trust is not invalid due to a lack of a trustee.

O.C.G.A. §53-12-7 (2006):

Survival of common law and equity.

O.C.G.A. §53-12-20 (2006):

Defines express trust.

O.C.G.A. §53-12-21 (2006):

To create a trust, no formal words are necessary. And if the words show the intention to create a trust and all the elements are present, a trust is created.

O.C.G.A. §53-12-22 (2006):

Capacity to create a trust.

O.C.G.A. §53-12-22.1 (2006):

Creation of trust with initial corpus as life insurance.

O.C.G.A. §53-12-23 (2006):

A trust may be created for any lawful purpose.

O.C.G.A. §53-12-24 (2006):

Capacity of a trustee.

O.C.G.A. §53-12-25 (2006):

Additions to trust property.

O.C.G.A. §53-12-26 (2006):

Duration of trusts.

O.C.G.A. §53-12-27 (2006):

Parol evidence may be used.

O.C.G.A. §53-12-28 (2006):

Spendthrift trusts.

O.C.G.A. §53-12-50 (2006) through O.C.G.A. §53-12-59 (2006):

Addresses trusts created by deed to acquire beneficial interest.

O.C.G.A. §53-12-70 (2006) through O.C.G.A. §53-12-74 (2006):

Addresses testamentary trusts.

O.C.G.A. §53-12-90 (2006):

An implied trust is either a resulting trust or a constructive trust.

O.C.G.A. §53-12-91(2006):

Defines resulting trust.

O.C.G.A. §53-12-92 (2006):

Defines purchase money resulting trusts

O.C.G.A. §53-12-93 (2006):

Defines constructive trusts.

O.C.G.A. §53-12-94 (2006):

Parol evidence and implied trusts.

O.C.G.A. §53-12-110 (2006) through O.C.G.A. §53-12-116 (2006):

Charitable trusts.

O.C.G.A. §53-12-120 (2006) through O.C.G.A. §53-12-133 (2006):

Provisions relating to private foundations and trusts.

O.C.G.A. §53-12-150 (2006) through O.C.G.A. §53-12-153 (2006):

Addresses revocation, modification and termination.

O.C.G.A. §53-12-170 (2006) through O.C.G.A. §53-12-176 (2006):

Addresses trustees.

O.C.G.A. §53-12-190 (2006) through O.C.G.A. §53-12-199 (2006):

Duties and liabilities of trustees.

O.C.G.A. §53-12-210 (2006) through O.C.G.A. §53-12-222 (2006):

Addresses allocation of principal and interest.

O.C.G.A. §53-12-230 (2006) through O.C.G.A. §53-12-234 (2006):

Incorporation of fiduciary powers by reference.

O.C.G.A. §53-12-250 (2006) through O.C.G.A. §53-12-265 (2006):

Trustee powers.

O.C.G.A. §53-12-280 (2006) through O.C.G.A. §53-12-290 (2006):

Trust investments.

Federal Statutes

Trusts are Subject to Federal Income Tax and Title 26 of the U.S. Code.

The Code can be found for free at www.gpoaccess.gov .

Cases

Wilcox County School District v. Sutton, 265 Ga. 720, 461 S.E.2d 868 (1995). Charitable trusts

Roughton v. Jones, 225 Ga. 774, 171 S.E.2d 536 (1969). Charitable trusts

Henderson v. Collins, 245 Ga. 776, 267 S.E.2d 202 (1980). Discretionary trusts

Barham v. U.S . , 715 F. Supp. 1091 (M.D. Ga. 1989). Discretionary trusts

Avera v. Avera, 253 Ga. 16, 315 S.E.2d 883 (1984). Spendthrift trusts

Speed v. Speed, 263 Ga. 166, 430 S.E.2d 348 (1993). Spendthrift trusts

Fowler v. Montgomery, 254 Ga. 118, 326 S.E.2d 765 (1985). Express trusts

King v. Tyler, 148 Ga. App. 272, 250 S.E.2d 784 (1978). Express trusts

Smith v. Hawks, 182 Ga. App. 379, 355 S.E.2d 669 (1987). Express trusts

Wells v. Wells, 216 Ga. 384, 116 S.E.2d 586 (1960). Implied trusts

Lee v. Lee, 260 Ga. 356, 392 S.E.2d 870 (1990). Implied trusts

Strickland v. Trust Co. of Georgia, 230 Ga. 714, 198 S.E.2d 668 (1973). Marital trusts

Hancock v. Hancock, 205 Ga. 684, 54 S.E.2d 385 (1949). Resulting trusts

Edwards v. Edwards, 267 Ga. 780, 482 S.E.2d 701 (1997). Resulting trusts

Jones v. First Nat. Bank of Rome, 142 Ga. App. 18, 234 S.E.2d 794 (1977). Tenative or Totten trusts

Spivey v. Methodist Home of South Georgia Conference, 226 Ga. 100. 172 S.E.2d 673 (1970). Tenative or Totten trusts

Wolfe v. Citizens and Southern Nat. Bank, 221 Ga. 412, 144 S.E.2d 735 (1965). Testamentary trusts

Continental Ins. Co. v. Higdon, 167 Ga. App. 231, 306 S.E.2d 20 (1983). Testamentary trusts

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Secondary Sources

Treatises

Bertram L. Levy & Benjamin T. White, *Georgia Estate Planning, Will Drafting, and Estate Administration Forms*, (Aspen Publishers 1987). Call number: KFG140.A65 L48 1987.

George Taylor Bogert, *Hornbook on the Law of Trusts*, (West Publishing Company 1973). Call number: KF730.B58 1987.

William F. Fratcher & Mark L. Ascher, *The Law of Trusts,* (Little Brown 1987. Call number: KF730.S3.

Austin W. Scott, *The Law of Trusts,* (Little Brown 1986). Call Number: KF730.S3 1967.

Austin W. Scott & Mark L. Ascher, *Scott and Ascher on Trusts,* (Aspen Publishers, 5 th Ed. 2006). Call number: KF730.S3 2006.

Books

Michael D. Alembik, Jackson L. Culbreth, Scott A. Halpern, & F. Allen Thornton, Jr., *Basic Drafting of Wills and Trusts in Georgia*, (National Business Institute, Inc. 1988) Call number: KFG142.B37 1988.

William L. Nossaman & Joseph L. Wyatt, Jr., *Trust Administration and Taxation,* (Matthew Bender 1972). Call number: KF6443.N6 1972.

Mark L. Ascher, *Federal Income Taxation of Trusts and Estates,* (Carolina Academic Press 2 nd Ed. 1996). Call number: KF6572.A93.

Jeffrey N. Pennell, *Income Taxation of Trusts, Estates, Grantors and Beneficiaries* (West Pub. Co. 1987). Call number: KF6443.A7P46 1987.

John L. Peschel & Edward D. Spurgeon, *Federal Taxation of Trusts, Grantors and Beneficiaries* (Warren, Gorham & Lamont 3 rd Ed. 1997). Call number: KF6443.P4 1997.

Daniel H. Redfearn, *Wills and Administration in Georiga, Including Estate Planning, Guardian and Ward Trusts, and Forms*, (Harrison Co. 1996). Call number: KFG144.R4 1996.

Verner F. Chaffin, *Georgia Annotations to the Restatement of the Law Second: Trusts 2d As Adopted by the American Law Institute*, (American Law Institute Publishers 1970). Call number: KFG137.P3 1970.

Elder Law Section of the State Bar of Georgia, *Special needs trusts : program materials / co-sponsors, Elder Law Section, State Bar of Georgia, Institute of Continuing Legal Education in Georgia.* (Institute of Continuing Legal Education in Georgia 2006). Call number: KFG137.A75 S64.

Mary F. Radford, *Wills and Trusts Drafting,* (Ga. State Univ. College of Law Center for Continuing Education 1989). Call number: KFG142.W55 1989.

Roger W. Andersen, *Understanding Trusts and Estates,* (Lexis Nexis 2003). Call number: KF730.A86 2003.

Jesse Dukeminier & Stanley Johanson, *Wills, Trusts and Estates,* (Aspen Publishers 2005). Call number: KF753.A7 D8 2005.

The books in the KF730 section of the library are all about trusts.

Georgia Jurisprudence

Georgia Jurisprudence is a legal encyclopedia with information pertaining to Georgia. It can be found in law libraries in Georgia and online through Westlaw.

William J. Linkhous & Judith M. Becker, *Trusts; Generally, Definitions,* 10 Ga. Jur. §17:1.

William J. Linkhous & Judith M. Becker, *Applicable Law*, 10 Ga. Jur. §17.2.

William J. Linkhous & Judith M. Becker, *Charitable Trusts*, 10 Ga. Jur. § 22:1 through § 22:23.

William J. Linkhous & Judith M. Becker, *Discretionary Trusts*, 10 Ga. Jur. §18:16.

William J. Linkhous & Judith M. Becker, *Express Trusts*, 10 Ga. Jur. §18:4 and 10 Ga. Jur. § 18:5

William J. Linkhous & Judith M. Becker, *Implied Trusts*, 10 Ga. Jur. §21:1 through 10 Ga. Jur. §21:5.

William J. Linkhous & Judith M. Becker, *Express and Implied Trusts*, 10 Ga. Jur. §17:5.

Todd J. Sanders & Judith M. Becker, *Marital Trusts, To Terminate or Revoke a Trust*, 11 Ga. Jur. §26:11

William J. Linkhous & Judith M. Becker, *Resulting Trusts,* 10 Ga. Jur. §21:6 through 10 Ga. Jur. §21:11.

William J. Linkhous & Judith M. Becker, *Spendthrift Trusts*, 10 Ga. Jur. § 18:17.

William J. Linkhous & Judith M. Becker, *Tenative or Totten Trusts*, 10 Ga. Jur. §18:6.

William J. Linkhous & Judith M. Becker, *Testamentary Trusts,* 10 Ga. Jur. §18:7 through §18:9.

Law Reviews

Anne S. Emmanuel, *The Georgia Trust Act,* Georgia State Bar Journal, Vol. 28, No. 2, Nov. 1991, p.95.

Verner F. Chaffin, *Georgia's Proposed Dynasty Trust: Giving the Dead Too Much Control*, Georgia Law Review, Vol. 35, No. 1, Fall 2000, p. 1.

Verner F. Chaffin, *The Rule Against Perpetuities as Applied to Georgia Wills and Trusts: a Survey and Suggestions for Reform, Georgia Law Review, Vol 16. n.2, Winter 1982, p. 235.*

Mary F. Radford, *Wills, Trusts, Guardianships, and Fiduciary Administration*, Mercer Law Review, Vol. 57, 2005-2006, p. 403.

Mary Louise Fellows & Gregory S. Alexander, *Forty Years of Codification of Estates and Trusts Law: Lessons for the Next Generation,* Georgia Law Review, Vol. 40 n.4 , Summer 2006, p. 1049.

Dale S. Voyles, *Trusts: Provide for the Termination of Irrevocable Trusts in Certain Circumstances,* Georgia State Law Review, Vol. 5.n1, Fall 1998, p. 516.

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Online Research/Other Sources

Online Resources

Lexis is a huge source of legal information that is very quick and easy to use. It is free for law students but is fairly expensive for others to use. The database is very extensive and covers all legal information.

Westlaw is a competitor of Lexis and is just as easy to use. It also is free to law students and costly to others.

Loislaw is a competitor of Lexis and is just as easy to use. It also is free to law students and costly to others. is similar to Lexis and Westlaw but is cheaper to use. It charges a flat rate while the others charge on a per search basis. It does not have as large a database as Lexis and Westlaw.

Lexisone is a smaller and cheaper version of Lexis. Much of it is free and it includes free forms.

Casemaker is free to law students and members of the Georgia Bar Association. It has federal and state cases available.

Other Sources

Under the Georgia Bar Webpage, www.gabar.org ,the Fiduciary Law Section has Developments in Georgia Fiduciary law summaries from 2000 and newsletters with Georgia Trust information.

Wills, Trusts and Estates Prof Blog is a site that has articles about trusts in Georiga.
http://lawprofessors.typepad.com/trusts_estates_prof/2006/04/georgia_update.html

Findlaw for the Public has free legal information and the information about trusts can be found at http://estate.findlaw.com/estate-planning/trusts/ .

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